

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

NOTICE OF REMOVAL

COME NOW Defendants XAVIER THOMAS, AAUSTIN EXPRESS, INC. and GM GROUP, INC., pursuant to 28 U.S.C. §§1332(a), 1441, and 1446, and hereby remove this action to the United States District Court for the Southern District of Illinois. In support of this Notice, Defendants state as follows:

1. On January 29, 2020, Plaintiff filed his Complaint against Defendants in the Circuit Court of St. Clair County, Illinois, seeking damages for personal injuries arising out of a vehicle collision on February 3, 2018 in Cahokia, Illinois. *See Exhibit A.*

2. The above Defendants have been served with the Complaint in this action, and this Notice of Removal is timely filed. *See Exhibit B.*

Subject Matter Jurisdiction

3. This Court possesses subject matter jurisdiction over this action because the matter presents a dispute between citizens of different states, and the amount in controversy is greater than \$75,000.00. *See*, 28 U.S.C. §1332(a). In Illinois, state law prohibits a demand for a specific sum. *See*, 28 U.S.C. §1446(c)(2)(A)(ii).

4. Complete diversity of citizenship exists between the parties.
 - (a) Plaintiff is a citizen of Illinois, residing in St. Clair County, Illinois. *See Exhibit A, ¶1.*
 - (b) Defendant, Xavier Thomas is a Missouri citizen. *See Exhibit A, ¶5.*
 - (c) Defendant Aaustin Express, Inc. is a Michigan corporation with its principal place of business in Taylor, Michigan. *See Affidavit of Adam McCloe, attached as Exhibit B.*
 - (d) Defendant GM Groups, Inc. was a Michigan corporation with its principal place of business in Taylor, Michigan. *See Affidavit of Adam McCloe, attached as Exhibit B.*
 - (e) Defendant DHL Express, Inc., according to the Complaint, is located in Ohio, with its registered agent in Florida. *See Exhibit A, ¶9.* According to the Illinois Secretary of State's website, DHL is incorporated in Delaware.
 - (f) Because the Plaintiff is a citizen of a different state than the Defendants, the parties meet the geographical requirements for diversity jurisdiction in this Court. *See, 28 U.S.C. §1332(a).*

5. Based on the nature of the alleged injury Plaintiff will seek an amount in excess of \$75,000.00; thus this Court possesses subject matter jurisdiction over this action. *See, 28 U.S.C. §1332(a).* The Complaint contains a prayer for damages in excess of \$50,000.00, which is the dollar figure required under state statutes. *See Complaint.* Notwithstanding this prayer, this Court may consider all facts relevant to the amount in controversy in this case at the time of this Notice of Removal. *See Meridian Sec. Ins. Co. v. Sadowski, 441 F.3d 536, 541 (7th Cir. 2006).* If the plaintiff,

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as "the master of the complaint," provides little information about the value of the claims alleged, a good-faith estimate of the stakes is acceptable if it is plausible. *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006). In fact, "unless recovery of an amount exceeding the jurisdictional minimum is legally impossible, the case belongs in federal court." *Back Doctors Ltd. v. Metro. Prop. and Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011).

6. A good faith assessment of the Complaint here reveals that the amount in controversy exceeds \$75,000.00. Plaintiff has alleged bodily injuries resulting from the vehicle collision, including injuries to his head, neck, and back, emotional injuries, and pain and suffering. *See* Ex. A. Under such allegations, Plaintiff will undoubtedly seek damages in excess of \$75,000.00 and the amount in controversy is satisfied for removal. *See, e.g., Vance v. Hill*, 2019 U.S. Dist. LEXIS 36548, at *4-5 (C.D. Ill. 2019) (jurisdictional amount was satisfied where the plaintiff alleged severe and permanent injuries and associated medical costs arising from a traffic accident); *Beckum v. Dierbergs Edwardsville LLC*, 2015 U.S. Dist. LEXIS 67775, at *1 (S.D. Ill. 2015) (jurisdictional amount satisfied where plaintiff alleged bodily injuries, pain and medical expenses).

7. The Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332(a) in that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and complete diversity exists.

Timeliness of Removal

8. Defendants file this Notice within thirty (30) days of service of the Complaint. Accordingly, this Notice of Removal is timely brought before this Court. *See*, 28 U.S.C. §1446(b).

Venue and Other Matters

9. Because this action was originally filed in the Circuit Court of St. Clair County, Illinois, the action is properly removable to the United States District Court for the Southern District of Illinois. *See*, 28 U.S.C. §1441(a); 28 U.S.C. §92(a)(1).

10. A copy of this Notice of Removal is being contemporaneously filed with the Circuit Court of St. Clair County, instructing that no further proceedings shall be had until such time as this matter is remanded from this Court.

11. A true and correct copy of the pleading which demonstrates that this matter is removable is attached hereto as Exhibit A. *See*, 28 U.S.C. §1446(b).

WHEREFORE, Defendants request that this Court assume full jurisdiction over the cause herein as provided by law, and that further proceedings in the Circuit Court of St. Clair County regarding the action be stayed. Defendants further demand that the trial of this matter in federal court be heard by a jury.

XAVIER THOMAS, AAUSTIN EXPRESS, INC. and
GM GROUPS, INC., Defendants

/s/ ***Barry S. Noeltner***

BY: _____
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this **17th** day of **March, 2020**, the foregoing was electronically served upon the individual(s) named below by transmitting same from my e-mail address to all primary and secondary e-mail addresses of record designated by that individual:

John L. Wilbers – jwilbers@thewilberslawfirm.com

Attorney for Plaintiff

/s/ Barry Noeltner
